

§ 3201.5

(i) A policy of awarding contracts on a case-by-case basis to the vendor offering a qualified biobased product composed of the highest percentage of biobased content practicable except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards set forth in the applicable specifications, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(ii) A policy of setting minimum biobased content specifications in such a way as to assure that the required biobased content of qualified biobased products is consistent with section 9002 of FSRIA and the requirements of the guidelines in this part except when such products:

(A) Are not available within a reasonable time;

(B) Fail to meet performance standards for the use to which they will be put, or the reasonable performance standards of the Federal agency; or

(C) Are available only at an unreasonable price.

(3) In implementing the preference program, Federal agencies shall treat as eligible for the preference biobased products from “designated countries,” as that term is defined in section 25.003 of the Federal Acquisition Regulation, provided that those products otherwise meet all requirements for participation in the preference program.

(4) No later than June 15, 2016, each Federal agency shall establish a targeted biobased-only procurement requirement under which the procuring agency shall issue a certain number of biobased-only contracts when the procuring agency is purchasing products, or purchasing services that include the use of products, that are included in a biobased product category designated by the Secretary.

(c) *Procurement specifications.* After the publication date of each designated product category and each designated intermediate ingredient or feedstock category, Federal agencies that have the responsibility for drafting or reviewing specifications for products procured by Federal agencies shall ensure

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within a specified time frame that their specifications require the use of qualified biobased products, consistent with the guidelines in this part. USDA will specify the allowable time frame in each designation rule. The biobased content of qualified biobased products within a designated product category or a designated intermediate ingredient or feedstock category may vary considerably from product to product based on the mix of ingredients used in its manufacture. Likewise, the biobased content of qualified biobased products that qualify because they are made from materials within designated intermediate ingredient or feedstock categories may also vary significantly. In procuring qualified biobased products, the percentage of biobased content should be maximized, consistent with achieving the desired performance for the product.

[70 FR 1809, Jan. 11, 2005, as amended at 71 FR 42575, July 27, 2006; 76 FR 6322, Feb. 4, 2011; 79 FR 44655, Aug. 1, 2014; 80 FR 34029, June 15, 2015]

§ 3201.5 Category designation.

(a) *Procedure.* Designated product categories, designated intermediate ingredient or feedstock categories, and designated final product categories composed of qualifying intermediate ingredients or feedstocks are listed in subpart B of this part.

(1) In designating product categories, USDA will designate categories composed of generic groupings of specific products or complex assemblies and will identify the minimum biobased content for each listed category or subcategory. As product categories are designated for procurement preference, they will be added to subpart B of this part.

(2) In designating intermediate ingredient or feedstock categories, USDA will designate categories composed of generic groupings of specific intermediate ingredients or feedstocks, and will identify the minimum biobased content for each listed category or subcategory. As categories are designated for product qualification, they will be added to subpart B of this part. USDA encourages manufacturers and vendors

of intermediate ingredients or feedstocks to provide USDA with information relevant to significant potential applications for intermediate ingredients or feedstocks, including estimates of typical formulation rates.

(3) During the process of designating intermediate ingredient or feedstock categories, USDA will also gather information on the various types of final products that are, or can be, made from those intermediate ingredients or feedstocks. Final products that fall within existing designated product categories will be subject to the minimum biobased content requirements for those product categories, as specified in subpart B of this part. New product categories that are identified during the information gathering process will be listed in the FEDERAL REGISTER proposed rule for designating the intermediate ingredient or feedstock categories. A minimum biobased content for each of the final product categories will also be identified based on the amount of designated intermediate ingredients or feedstocks such products contain. Public comment will be invited on the list of potential final product categories, and the minimum biobased content for each, as well as on the intermediate ingredient and feedstock categories being proposed for designation. Public comments on the list of potential final product categories will be considered, along with any additional information gathered by USDA, and the list will be finalized. When the final rule designating the intermediate ingredient or feedstock categories, by adding them to subpart B of this part, is published in the FEDERAL REGISTER, the list of final product categories will also be added to subpart B of this part. Once these final product categories are listed in subpart B of this part, they will become eligible for the Federal procurement preference.

(b) *Considerations.* (1) In designating product categories and intermediate ingredient or feedstock categories, USDA will consider the availability of qualified biobased products and the economic and technological feasibility of using such products, including price. USDA will gather information on individual qualified biobased products within a category and extrapolate that

information to the category level for consideration in designating categories.

(2) In designating product categories and intermediate ingredient or feedstock categories for the BioPreferred Program, USDA will consider as eligible only those products that use innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of the biobased product. USDA will consider products that meet one or more of the criteria in paragraphs (b)(2)(i) through (iv) of this section to be eligible for the BioPreferred Program. USDA will also consider other documentation of innovative approaches in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of biobased products on a case-by-case basis. USDA may exclude from the BioPreferred Program any products whose manufacturers are unable to provide USDA with the documentation necessary to verify claims that innovative approaches are used in the growing, harvesting, sourcing, procuring, processing, manufacturing, or application of their biobased products.

(i) *Product applications.* (A) The biobased product or material is used or applied in applications that differ from historical applications; or

(B) The biobased product or material is grown, harvested, manufactured, processed, sourced, or applied in other innovative ways; or

(C) The biobased content of the product or material makes its composition different from products or material used for the same historical uses or applications.

(ii) *Manufacturing and processing.* (A) The biobased product or material is manufactured or processed using renewable, biomass energy or using technology that is demonstrated to increase energy efficiency or reduce reliance on fossil-fuel based energy sources; or

(B) The biobased product or material is manufactured or processed with technologies that ensure high feedstock material recovery and use.

(iii) *Environmental Product Declaration.* The product has a current Environmental Product Declaration as defined by International Standard ISO 14025, Environmental Labels and Declarations—Type III Environmental Declarations—Principles and Procedures.

(iv) *Raw material sourcing.* (A) The raw material used in the product is sourced from a Legal Source, a Responsible Source, or a Certified Source as designated by ASTM D7612–10, Standard Practice for Categorizing Wood and Wood-Based Products According to Their Fiber Sources; or

(B) The raw material used in the product is 100% resourced or recycled (such as material obtained from building deconstruction); or

(C) The raw material used in the product is from an urban environment and is acquired as a result of activities related to a natural disaster, land clearing, right-of-way maintenance, tree health improvement, or public safety.

(c) *Exclusions.* Motor vehicle fuels, heating oil, and electricity are excluded by statute from this program.

[79 FR 44655, Aug. 1, 2014, as amended at 80 FR 34029, June 15, 2015]

§ 3201.6 Providing product information to Federal agencies.

(a) *Informational Web site.* An informational USDA Web site implementing section 9002 of FSRIA can be found at: <http://www.biopreferred.gov>. USDA will maintain a voluntary Web-based information site for manufacturers and vendors of qualified biobased products and Federal agencies to exchange information, as described in paragraphs (a)(1) and (2) of this section.

(1) *Product information.* The Web site will, as determined to be necessary by the Secretary based on the availability of data, provide information as to the availability, price, biobased content, performance and environmental and public health benefits of the designated product categories and designated intermediate ingredient or feedstock categories. USDA encourages manufacturers and vendors to provide product and business contact information for designated categories. Instructions for posting information are found on the

Web site itself. USDA also encourages Federal agencies to utilize this Web site to obtain current information on designated categories, contact information on manufacturers and vendors, and access to information on product characteristics relevant to procurement decisions. In addition to any information provided on the Web site, manufacturers and vendors are expected to provide relevant information to Federal agencies, subject to the limitations specified in § 3201.8(a), with respect to product characteristics, including verification of such characteristics if requested.

(2) *National Testing Center Registry.* The Web site will include an electronic listing of recognized industry standard testing organizations that will serve biobased product manufacturers such as ASTM International, Society of Automotive Engineers, and the American Petroleum Institute. USDA encourages stakeholders to submit information on other possible testing resources to the BioPreferred program for inclusion.

(b) *Advertising, labeling and marketing claims.* Manufacturers and vendors are reminded that their advertising, labeling, and other marketing claims, including claims regarding health and environmental benefits of the product, must conform to the Federal Trade Commission “Guides for the Use of Environmental Marketing Claims,” 16 CFR part 260 (see: http://www.access.gpo.gov/nara/cfr/waisidx_08/16cfr260_08.html). For further requirements, click on the link to the “Guidelines for Marketing the BioPreferred Program.”

[70 FR 1809, Jan. 11, 2005, as amended at 76 FR 6322, Feb. 4, 2011; 79 FR 44656, Aug. 1, 2014; 80 FR 34030, June 15, 2015]

§ 3201.7 Determining biobased content.

(a) *Certification requirements.* For any qualified biobased product offered for preferred procurement, manufacturers and vendors must certify that the product meets the biobased content requirements for the designated product category or designated intermediate ingredient or feedstock category within which the qualified biobased product